

corrected

Date of decision:11-9-95

Special Civil Application no.227 of 1994 with Civil Application no.2112 of 1995, Special Civil Application no.228 of 1994 with Civil Application no.2113 of 1995, Special Civil Application no.229 of 1994 with Civil Application no.2114 of 1995 and Special Civil Application no.230 of 1994 with Civil Application no.2115 of 1995.

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.B.S. Supehia,learned counsel for the petitioners.

Mr.D.D.Vyas,learned counsel for the respondent

No.1

Mr.P.G.Desai,learned A.G.P. for the respondent

NO.2.

Coram: (M.R. Calla, J.)

Dt: 11-9-95

COMMON ORAL JUDGMENT:

All these four matters came up before the court on Civil Application Nos.2112 to 2115 of 1995 filed in respective main petitions by the District Primary Education officer, who is respondent No.1 in the main petitions. At the time of the arguments, both the sides submitted that the main matters may be finally decided as the Rule had already been issued in these matters and the controversy involved in these matters is a short one and based on identical set of facts. All the four Special Civil Applications alongwith the aforesaid four Civil Applications are, therefore, decided by this common judgment and order.

There is no dispute amongst the parties that certain number of vacancies, on the post of Primary Teacher, were notified by the District Primary Education Officer, Valsad District Panchayat, District Valsad by issuing notice inviting applications vide advertisement dated 21-10-91. All the four petitioners herein applied in response to the aforesaid notice inviting applications, which was issued in October 1991. At that time i.e. on the date of the advertisement, all the four petitioners were short of the age of 18 years, which is the minimum prescribed age under rule 4 of the Gujarat Panchayat Service (Recruitment of Primary Teacher) Rules, 1970. Earlier Special Civil Application (which had been filed by the petitioner in Special Civil Application No.227 of 1994) was allowed by this Court being Special Civil Application No.2411 of 1992 on 3-9-93. Petitioner in Special Civil Application no.228 of 1994 i.e. Patel Pankajbhai Manibhai withdrew the earlier Special Civil Application being Special Civil Application no.2520 of 1992 after he had been interviewed under the interim orders of this court and after his name was included in the select list. The petitioners in Special Civil Application Nos.229 of 1994 and Special Civil Application no.230 of 1994, namely, Patel Vijaykumar Chhotubhai and Patel Nileshkumar Babubhai had not filed Special Civil Applications earlier, but they were interviewed as they were also covered as similarly situated candidates on the strength of the interim orders passed by this court in other matters. It is submitted by Mr. Vyas appearing for the respondent No.1 that the decision of this court rendered on 3-9-93 in the case of Thakore Jignakumari Ranjitsinh in Special Civil Application no.2411 of 1992 is a subject matter of Letters Patent Appeal before the Division Bench and the Appeal is pending.

There is no dispute that the names of all these four petitioners are there in the select list for

appointments on the post of Primary Teacher. There is no dispute that the process for recruitment, which was started in October 1991 continued upto July, 1992 and by this time and before the process of recruitment could be over, all these four petitioners have attained the minimum age of 18 years on 1-7-92 in terms of the explanation added in Rule 4 of the Gujarat Panchayat Service (Recruitment of Primary Teacher) Rules, 1970, as per the amendment, which was made in the year 1979. The explanation added under Rule 4, which gives the date on which the age is to be seen, is reproduced as under:

"Explanation :- For the purpose of this rule, a candidate shall be deemed to have attained the age limit, if he attains such age limit before the first July of the year in which the recruitment is made."

So far as the interim orders passed in these matters are concerned, the interim orders were passed in all these four matters on 28-3-94 while issuing the Rule and by these interim orders the relief was granted that the respondent No. 1 would not make any further appointments on the basis of the select list and after March, 1994 the select list could not be operated on account of the interim orders and the Civil Applications for vacating the interim orders had been moved now in August, 1995 only.

The short question, which requires consideration, is as to whether the age of these petitioners is to be seen as on 1-7-91 or on 1-7-92. The explanation quoted herein-above makes it amply clear that for the purpose of Rule 4, a candidate shall be deemed to have attained the age limit if he attains such age limit before 1st July of the year in which the recruitment is made. In the case at hand, admittedly the process of recruitment started in 1991, but the process of recruitment was over in July 1992. Thus 1991 as well as 1992 has to be taken as the year of recruitment. The petitioners have already been included in the select list. As per the statement of Mr. Vyas, the select list included 302 candidates, out of which only 50 appointments have been made uptill now and rest of the 252 appointments were yet to be made. Thus, the process of recruitment, which is started in 1991 and continued upto 1992 has already culminated into 50 appointments, which had already been given and the respondents are desirous to go ahead to make appointments on the basis of the same select list, which was prepared in 1992. In such a

situation, when all the four petitioners had attained the age of 18 years in the year 1992 on the first July i.e. the year in which the recruitment is over and when their names are already there in the select list, there can not be any justification to now exclude them while making appointments on the ground that they had not attained the age of 18 years in July 1991. The explanation added under rule 4 in the year 1979 cloth complete eligibility upon all these petitioners coupled with the fact that the recruitment lasted upto July,1992. On such an admitted fact situation, the petitioners herein can not be deprived of the natural consequences and the fruits of their selection and once their names are in the select list,the select list has to be operated to its logical end without excluding the petitioners in accordance with the merits position assigned to these petitioners in the select list and the number of the vacancies, which are available with the respondents.

In the result all the four Civil Applications moved by the respondents are disposed of as no orders are required to be passed therein because the main Special Civil Applications,in which the Civil Applications had been filed, stand decided by this common order and all the four Special Civil Application Nos.227 to 230 of 1994 are allowed. The respondents my now proceed with the select list,including the names of all the four petitioners, in accordance with law. Rule in all the four petitions is made absolute accordingly. No order as to costs in all the petitions.